

Black Bear Mining, Inc. and United Mine Workers of America. Case 9-CA-34413

June 25, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon a charge filed by United Mine Workers of America (the Union), the General Counsel of the National Labor Relations Board issued a first amended complaint, compliance specification, and notice of hearing on February 23, 1998, against Black Bear Mining, Inc. (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. On April 15, 1998, the Respondent filed an amended answer in which it admitted all material factual allegations in the amended complaint, and further admitted its obligation to pay the amounts set forth in the specification.

On May 1, 1998, the Acting General Counsel filed a Motion for Summary Judgment, with exhibits attached. On May 6, 1998, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

As noted above, the Respondent, in its amended answer, admitted all material factual allegations in the amended complaint. Thus, the Respondent admitted that:

Since about September 1, 1996, Respondent has failed to continue in full force and effect all the terms and conditions of the [parties' collective-bargaining] agreement . . . by failing to provide health insurance benefits to unit employees pursuant to Article XX of said agreement. The terms and conditions of employment . . . are mandatory subjects for the purpose of collective bargaining. Respondent engaged in the conduct . . . without the Union's consent.

As the Respondent has raised no defense, and has admitted its obligation to pay the amounts of medical expenses set forth in the specification, we find that all material allegations of the complaint are true and that the Respondent is obligated to pay those amounts. We therefore grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT**I. JURISDICTION**

The Respondent, a corporation, maintained a coal mining operation at a site in Logan County, West Virginia until it ceased operations on July 26, 1996. The Respondent has admitted, and we find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since February 22, 1994, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit. The unit is:

All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by the [Respondent]), repair and maintenance work performed at the mine site or at a central shop(s) of the [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by the [Respondent], excluding all coal inspectors, weigh bosses at the mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

Since February 22, 1994, the Union has been recognized by the Respondent, based on Section 9(a) of the Act, as the exclusive bargaining representative of the unit employees with such recognition having been embodied in a collective-bargaining agreement, which is effective from December 16, 1993 to August 1, 1998.

Since about September 1, 1996, the Respondent has failed to provide health insurance benefits to unit employees pursuant to article XX of the parties' agreement. We find that by engaging in the above conduct without the Union's consent, the Respondent has refused to bargain with the Union within the meaning of Section 8(d), and has violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By failing to comply with the health insurance benefits provision of article XX without the Union's consent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sec-

tion 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to reimburse eligible unit employees for their medical expenses as set forth in the compliance specification, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987),¹ minus any tax withholdings required by Federal and state laws. As the Respondent has ceased operations, we shall order it to mail copies of the attached notice to employees and to the Union instead of posting the notice.

ORDER

The National Labor Relations Board orders that the Respondent, Black Bear Mining, Inc., Logan County, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively with United Mine Workers of America by failing to provide unit employees with health insurance benefits to which they are entitled under article XX of the collective-bargaining agreement, without the Union's consent. The unit is:

All employees of [Respondent] engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by the [Respondent]), repair and maintenance work performed at the mine site or at a central shop(s) of the [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by the [Respondent], excluding all coal inspectors, weigh bosses at the mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹The specification contains an interest computation based on 9 percent APR. Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621. We shall apply the *New Horizons* formula rather than that appearing in the specification.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay the following eligible unit employees the amounts of medical expenses set forth next to their names which represent the amounts owed them, plus interest accrued to the date of payment computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), minus any tax withholdings required by Federal and state laws:

Lige Paulsen	\$19,968.80
Arble Lester	737.00
James Roberts	1,207.61
Benny Galyean	183.00
Troy New	610.00
Emmett Jeffrey	578.00
Total	\$23,284.41

(b) Within 14 days after service by the region, mail at its own expense signed and dated copies of the attached notice marked "Appendix" to the Union and to all unit employees employed as of the date the Respondent closed its facility.² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent to the last known address of each employee.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively with United Mine Workers of America as the exclusive collective-bargaining representative of the employees in the unit described below by failing to provide eligible employees with health insurance benefits as required by article XX of our collective-bargaining agreement, without the Union's consent. The unit is:

All [our] employees engaged in the production of coal, including removal of overburden and coal

waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by [us]), repair and maintenance work performed at [our] mine site or at our central shop(s) and maintenance of gob piles and mineroads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [us], excluding all coal inspectors, weigh bosses at the mines where men are paid by ton, watchmen, clerks, engineering and technical

employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make eligible unit employees whole by paying them the medical expenses that remain owed to them, with interest.

BLACK BEAR MINING, INC.